IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1054 OF 2005

Hindustan Petroleum Corporation Ltd. ...Petitioner

Vs.

K.Raheja Reality Pvt. Ltd. ...Respondent

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Mr.N.V.Walawalkar with M.D.Siodia with N.R.Modi i/b M/s.Rustamji & Ginwala for Petitioner
Mr.V.A.Thorat with Mr.K.D.Abichandni for Respondent

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CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 7,2005

P.C.:

1. Heard Mr.Walawalkar, the learned counsel for the Petitioner-Corporation and Mr.V.A.Thorat, the learned senior counsel with Mr.Abichandani for the Respondent-company.

2. This petition filed under Article 227 of the Constitution of India arises from the decree of ejectment passed by the Small Causes Court at Mumbai in T.E.& R. Suit No.235/294/2001 on 2.9.2002 and confirmed by the Appellate Bench of the Small Causes Court on 16.11.2004. The ejectment decree has been passed under the Maharashtra Rent Control Act 1999 and the petition has been specially assigned to me.

3. I have heard the parties on the preliminary issue of entertaining the writ petition, more so, when a remedy of Civil Revision Application under Section 115 of the C.P.C. against the impugned decree is not barred. In the case of *Sadhana Lodh Vs. National Insurance Company and another; [AIR 2003 SC 1561],* a three Judge Bench held, inter alia, that:

> . "Even if where the remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the C.P.C. Where the remedy for filing revision before the High Court under Section 115 of CPC has been expressly barred by a State enactment, only in such case, a petition under Article 227 of the Constitution would lie and not under Article 226 of the Costitution."

. In the case of *Harbanslal Sahaniya and another Vs. Indian Oil Corporation Ltd. and Ors. [2003 (2) SCC 107],* the rule of exclusion of writ jurisdiction by availability of an alternative remedy was considered and Their Lordships stated in that regard as under:

> . " The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, inspite of availability of the alternative

> remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the fundamental right; (ii) where there is failure of principles of natural justice; and (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

4. Admittedly, the Maharashtra Rent Control Act, 1999 does not bar the remedy of Civil Revision Application under Section 115 of the C.P.C. and there is no doubt that the orders impugned do not attract any of the above mentioned exceptions to entertain a writ petition inspite of alternative remedy being available.

5. Hence, this writ petition cannot be entertained and the Petitioner must be relegated to the remedy to file Civil Revision Application under Section 115 of the C.P.C. The petition is therefore, disposed of as not tenable and with liberty to the Petitioner to file Civil Revision Application.

6. Ordinary copy of this order be issued to the respective parties.

[B.H.MARLAPALLE,J.]